

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

20-mj-5026 (MJR)

JOSEPH LICATA,

Defendant.

**MOTION TO ADJOURN THE RULE 48(b) DISMISSAL DATE AND FOR
ADDITIONAL EXCLUSION OF TIME UNDER THE SPEEDY TRIAL ACT**

THE UNITED STATES OF AMERICA, by and through its attorney, James P. Kennedy, Jr., United States Attorney, Brendan T. Cullinane, Assistant United States Attorney, of counsel, hereby moves the Court for an adjournment of the Rule 48(b) dismissal date set for April 23, 2020, and for additional exclusion of time under the Speedy Trial Act. Counsel for the defendant, Brian P. Comerford, Esq., joins in the relief sought herein.

DATED: Buffalo, New York, April 20, 2020.

JAMES P. KENNEDY, JR.
United States Attorney

BY: s/BRENDAN T. CULLINANE
Assistant United States Attorney
United States Attorney's Office
Western District of New York
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AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

BRENDAN T. CULLINANE, being duly sworn, deposes and states:

1. I am an Assistant United States Attorney for the Western District of New York and assigned to my office's case file in the above captioned matter. This affidavit is submitted in support of the government's motion to adjourn the Rule 48(b) dismissal set for April 23, 2020, and for additional exclusion of time under the Speedy Trial Act. The adjournment will also give counsel for the defendant, Brian P. Comerford, Esq., sufficient time to provide the effective assistance of counsel.

2. On January 23, 2020, the Court scheduled the Rule 48(b) date for April 23, 2020. See Doc. No. 2.

3. Since the Court scheduled the Rule 48(b) date, the parties have continued to discuss a plea resolution in this matter and are continuing to work towards a pre-indictment resolution.

4. The government, with the consent of counsel for the defendant, now moves to adjourn the Rule 48(b) dismissal date for a period of approximately sixty (60) days to permit the parties to continue and finalize pre-indictment plea negotiations. By this affidavit, the government, with the consent of counsel for the defendant, moves for an exclusion of speedy trial time from and including April 23, 2020, to and including June 23, 2020, pursuant to Title 18, United States Code, Sections 3161(h)(7)(A) and (h)(7)(B)(iv), and Rule 5.1 of the Federal Rules of Criminal Procedure.

5. The defendant's interest in continuity of effective assistance of counsel and in obtaining a lesser sentence outweighs the interest of the defendant in a speedy trial. In addition, obtaining a guilty plea will conserve resources and avoid the time and expense of trial and appeal combined with the certainty of conviction. Based on the foregoing representations, the exclusion of time in this matter is in the interest of justice and not contrary to the interests of the public and the defendant in a speedy trial pursuant to 18 U.S.C. §§ 3161(h)(7)(A) and (h)(7)(B)(iv), and Rule 5.1 of the Federal Rules of Criminal Procedure.

WHEREFORE, for all of the foregoing reasons, it is respectfully requested that the Rule 48(b) dismissal date be set for June 23, 2020, and that the time from and including April 23, 2020, to and including June 23, 2020, be excluded from the Speedy Trial Act.

s/BRENDAN T. CULLINANE
Assistant United States Attorney
United States Attorney's Office
Western District of New York
138 Delaware Avenue
Buffalo, New York 14202
716/843-5875
Brendan.Cullinane@usdoj.gov

Subscribed and sworn to before me

this 20th day of April, 2020.

s/Jessica M. Duquette
Notary Public of New York
Registration No.: 01DU6373793
Qualified in Erie County
My Commission Expires on 04/16/2022